

From the
INTERNATIONAL SEARCHING AUTHORITY

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PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Date of mailing 29 March 2005 (29-03-2005)
(day/month/year)

Applicant's or agent's file reference
1001P19PC

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/CA2004/002080

International filing date (day/month/year)
06 December 2004 (06-12-2004)

Priority date (day/month/year)
16 December 2003 (16-12-2003)

International Patent Classification (IPC) or both national classification and IPC
IPC7: F02D-9/06

Applicant
JENARA ENTERPRISES LTD. et al

1. This opinion contains indications relating to the following items :

- | | |
|--|---|
| <input checked="" type="checkbox"/> Box No. I | Basis of the opinion |
| <input type="checkbox"/> Box No. II | Priority |
| <input type="checkbox"/> Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability |
| <input type="checkbox"/> Box No. IV | Lack of unity of invention |
| <input checked="" type="checkbox"/> Box No. V | Reasoned statement under Rule 43bis.1(a)(I) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement. |
| <input type="checkbox"/> Box No. VI | Certain documents cited |
| <input type="checkbox"/> Box No. VII | Certain defects in the international application |
| <input checked="" type="checkbox"/> Box No. VIII | Certain observations on the international application |

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/CA
Canadian Intellectual Property Office
Place du Portage I, C114 - 1st Floor, Box PCT
50 Victoria Street
Gatineau, Quebec K1A 0C9

Authorized officer

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Box No. I **Basis of this opinion**

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language which it was filed, unless otherwise indicated under this item.

[] This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material
 - [] a sequence listing
 - [] table(s) related to the sequence listing
 - b. format of material
 - [] in written format
 - [] in computer readable form
 - c. time of filing/furnishing
 - [] contained in the international application as filed.
 - [] filed together with the international application in computer readable form.
 - [] furnished subsequently to this Authority for the purposes of search.
3. [] In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statement that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments :

Box No. V Reasoned statement under Rule 43bis.1(a)(I) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	9-11, 15, 31-33, 37, 53-55 and 59	YES
	Claims	1-8, 12-14, 16-30, 34-36, 38-52, 56-58 and 60-66	NO
Inventive step (IS)	Claims	9-11, 15, 31-33, 37, 53-55 and 59	YES
	Claims	1-8, 12-14, 16-30, 34-36, 38-52, 56-58 and 60-66	NO
Industrial applicability (IA)	Claims	All	YES
	Claims	None	NO

2. Citations and explanations :

Reference is made to the following document:

D1: US 6,179,096 B1 (KINERSON, K. et al.) 30 January 2001 (30-01-2001)

D1 discloses an exhaust brake (see Figs. 4-6) comprising a body 110 having a passageway 112 for exhaust gases therein; a valve member 130 movably located within the passageway for selective movement between an open position where the valve member opens the passageway and exhaust gases are free to move through the passageway and a closed position where the valve member blocks the passageway and the passage of exhaust gases through the passageway, the valve member having an aperture 216 therethrough to permit a limited flow of exhaust gases through the aperture when the aperture is open; an exhaust valve actuator mechanism (shown generally at Fig. 6) coupled to the valve member for moving the valve member between the open position and the closed position; a closure member 222 positioned adjacent to the aperture, the closure member having an open position where the closure member is spaced apart from the valve member and permits a flow of exhaust gases through the aperture, and the closure member having a closed position where the closure member contacts the valve member about the aperture and inhibits a flow of exhaust gases through the aperture; and a relief actuator mechanism (see Fig. 6), the relief actuator mechanism including an actuator member 244 which operatively engages the closure member, the relief mechanism bringing the closure member into operative engagement with the valve member with sufficient force, when the valve member is closed, to maintain the closure member in the closed position when the exhaust gases are below a predetermined pressure. The actuator member is pivotally biased against the closure member by means of spring member 226 in conjunction with an optional control system. The control system may include an actuator 310 attached to nut 248. The actuator may be a vacuum, air, hydraulic or an electronic actuator. The actuator may be computer controlled to determine the appropriate biasing force for the closure member based on an engine parameter.

1. All essential features of Claims 1-8, 12-14, 16-30, 34-36, 38-52, 56-58 and 60-66 are disclosed by D1, therefore these claims do not satisfy the criterion set forth in Articles 33(2) and 33(3) PCT with regard to novelty and inventive step.

2. All claims meet the requirement set out by Article 33(4) PCT with regard to industrial applicability.

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made :

1. The abstract does not comply with Rule 8.1 d) PCT. Each main technical feature of the invention a reference sign must be included in the abstract, and placed between parentheses.
- 2, Claim 12 is indefinite and does not comply with PCT Article 6. The preamble of claim 12 refers to claim 1. There is no such claim.